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14 SHAKEY'S PIZZA ASIA VENTURES, INC. and  
15 Third Party Defendants CINCO CORPORATION,  
16 PC INTERNATIONAL PTE LTD., and SPAVI  
17 INTERNATIONAL USA, INC.

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20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

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28 SHAKEY'S PIZZA ASIA VENTURES,  
16 INC, a Philippines corporation,  
17 Plaintiff,  
18 vs.  
19  
20 PCJV USA, LLC, a Delaware limited  
21 liability company; PCI TRADING , LLC, a  
22 Delaware limited liability company; GUY  
23 KOREN, an individual; POTATO CORNER  
24 LA GROUP, LLC, a California limited  
25 liability company; NKM CAPITAL GROUP,  
26 LLC, a California limited liability company;  
27 J & K AMERICANA, LLC, a California  
28 limited liability company; J&K  
LAKEWOOD, LLC, a California limited  
liability company; J&K VALLEY FAIR,  
LLC, a California limited liability company;

Case No. 2:24-CV-04546-SB(AGRx)

*Hon. Stanley Blumenfeld, Jr.*

**PLAINTIFF AND  
COUNTERCLAIM DEFENDANT  
AND THIRD-PARTY  
DEFENDANTS' PROFFER OF  
PROOF AS TO WAIVER AND  
ASSIGNMENT IN GROSS  
DEFENSES**

Complaint Filed: May 31, 2024  
Trial Date: August 18, 2025

1 J & K ONTARIO, LLC, a California limited  
2 liability company; HLK MILPITAS, LLC, a  
3 California, limited liability company; GK  
4 CERRITOS, LLC, a California, limited  
5 liability company; J&K PC TRUCKS, LLC,  
6 a California limited liability company; and,  
GK CAPITAL GROUP, LLC, a California  
limited liability company and DOES 1  
through 100, inclusive,

7 Defendants.

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10 PCJV USA, LLC, a Delaware limited  
11 liability company; PCI TRADING LLC, a  
12 Delaware limited liability company;  
13 POTATO CORNER LA GROUP LLC, a  
14 California limited liability company; GK  
15 CAPITAL GROUP, LLC, a California  
16 limited liability company; NKM CAPITAL  
17 GROUP LLC, a California limited liability  
18 company; and GUY KOREN, an individual,

19  
20 Counter-Claimants,

21  
22 v.

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24 SHAKEY'S PIZZA ASIA VENTURES,  
25 INC, a Philippines corporation,

26  
27 Counter Defendant.

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29 PCJV USA, LLC, a Delaware limited  
30 liability company; PCI TRADING LLC, a  
31 Delaware limited liability company;  
32 POTATO CORNER LA GROUP LLC, a  
33 California limited liability company; GK  
34 CAPITAL GROUP, LLC, a California  
35 limited liability company; NKM CAPITAL

1 GROUP LLC, a California limited liability  
2 company; and GUY KOREN, an individual,

3 Third Party Plaintiff,

4 v.

5 PC INTERNATIONAL PTE LTD., a  
6 Singapore business entity; SPAVI  
7 INTERNATIONAL USA, INC., a California  
8 corporation; CINCO CORPORATION, a  
9 Philippines corporation; and ROES 1 through  
10, inclusive,

11 Third Party Defendants.

## PROFFER OF PROOF

### I. INTRODUCTION

Pursuant to this Court’s Order on August 15, 2025, Plaintiff and Counterclaim Defendant Shakey’s Pizza Asia Ventures, Inc. (“SPA VI”), and Third Party Defendants Cinco Corporation, SPA VI International USA Inc., and PC International PTE Ltd. (“Third Party Defendants,” and, collectively “Plaintiff and Third Party Defendants”), submit this Proffer of Proof in advance of trial, with respect to the waiver and assignment in gross defenses.

This proffer is submitted to inform the Court of the evidence the Plaintiff and Third-Party Defendants expect to introduce and the testimony they expect to elicit from its witnesses in support of their waiver defense. Separately, as the Court also appears to have inquired as to Plaintiff and Third-Party Defendants’ proffer as to Defendants’ assignment in gross and waiver defenses, Plaintiff and Third-Party Defendants also provide their best good faith proffer as to the evidence that will refute those defenses.

### II. PLAINTIFF AND THIRD-PARTY DEFENDANTS’ PROFFER OF PROOF AS TO THEIR WAIVER DEFENSE

#### A. Summary of Defense and Legal Authority

A central factual defense of Defendants to each of Plaintiffs’ claims arises from an assertion that, although not documented in any signed or written agreement, Cinco had conferred upon Defendant PCJV USA, LLC an irrevocable, permanent, perpetual, and royalty free license to use all of the intellectual property representing the Potato Corner brand (“Defendants’ Claimed Right”).

In response Plaintiff and Third-Party Defendants offer a defense of waiver. The elements of waiver in this context are as follows: (1) that Defendants claimed a right about which they had actual knowledge; (2) Defendants’ relinquishment of that right, that is either (a) expressed and/or based on their words, or (b) implied based on conduct inconsistent with an intent to enforce that right. *hiQ Labs, Inc. v.*

1 *LinkedIn Corp.*, 639 F. Supp. 3d 944, 962-63 (N.D. Cal. 2022). If, for example,  
2 Defendants’ actions “are so inconsistent with an intent to enforce the right as to  
3 induce a reasonable belief [by the Plaintiff and/or Third-Party Defendants] that such  
4 right has been relinquished.” *Id.*

5 It should be noted that this defense is not offered as a separate waiver of the  
6 intent to disprove that Defendants’ Claimed Right existed. To the contrary, the  
7 evidence will establish the opposite: none of the Defendants ever enjoyed such a  
8 right. This defense would first require Defendants to prove the existence of that  
9 right.

10 **B. Summary of Expected Testimony**

11 1. Joseph P. Magsaysay, Jr.: he is expected to testify as to the  
12 history of the license, including the sources from Defendants’  
13 Claimed Right purportedly arise. His testimony will refute that  
14 such right exists, by providing testimony about how the parties  
15 behaved before this dispute ever came about (including, for  
16 example, that there has been a demand for a written license  
17 agreement for over a decade, all parties, including Guy Koren  
18 assented to this requirement, and that at no point did any of the  
19 Defendants, including Mr. Koren, ever state that there was no  
20 need for a written license agreement since the AJVA conferred an  
21 irrevocable, permanent, perpetual, and royalty free license to use  
22 all of the intellectual property representing the Potato Corner  
23 brand. Mr. Magsaysay will also testify that, had any of the  
24 Defendants asserted such a right before settling the prior action,  
25 they would not have settled that action. He will offer other points  
26 in time that Cinco would have taken different action including,  
27 for example, the sale of the brand to SPAVI.

- 1       2. Myrose Victor: she is expected to testify as to the statements and  
2       actions of Defendants between 2018 and 2021 regarding the  
3       license, including the sources from Defendants' Claimed Right  
4       purportedly arise. Her testimony will refute that such right exists,  
5       by providing testimony about how the parties behaved before this  
6       dispute ever came about. Ms. Victor will also testify that, had  
7       any of the Defendants asserted such a right prior to 2021, for  
8       example, Cinco would have included this as a declaratory relief in  
9       the prior action. She will also offer how this information would  
10      have changed SPAVI's acquisition of the brand, and how SPAVI  
11      would have approached the United States issues arising from this  
12      purported right.
- 13      3. Vicente Gregorio: he, as CEO of SPAVI is expected to testify as  
14      to the words and acts of Defendants during the negotiation of a  
15      written license agreement with Guy Koren immediately preceding  
16      this action soi as to not only defeat the existence of the right, but  
17      also to establish the waiver.
- 18      4. Yuiopw Leong Tan: he, as a Director of SPAVI responsible for  
19      international franchising and licensing is also expected to testify  
20      as to the words and acts of Defendants during the negotiation of a  
21      written license agreement with Guy Koren immediately preceding  
22      this action soi as to not only defeat the existence of the right, but  
23      also to establish the waiver.
- 24      5. Guy Koren: he, of course, will be confronted with the absence of  
25      any evidence of Defendants' Claimed Right as well as his having  
26      concealed the belief as to the existence of Defendants' Claimed  
27      Right at key moments over the last decade that caused Plaintiff

1 and Third Party Defendants to take action that they would not  
2 have otherwise.

3 **C. Summary of Expected Documentary / Physical Evidence**

4 1. Purported Documents from which Defendants' Claimed Right  
5 arises. These documents will evidence the absence of any such  
6 right.  
7 2. Email correspondence from Guy Koren over the last decade:  
8 these will establish that he did not believe any such right exists,  
9 and moreover, that he acted and spoke in such a manner to evince  
10 a belief that no such right exists and he needs to get a written  
11 license in place.  
12 3. Email correspondence from Plaintiff and Third-Party Defendants  
13 over the last decade (collectively): evidencing that they had no  
14 idea that Defendants possessed such a belief, and evidencing the  
15 actions that they took that relief upon the absence of any such  
16 right. For example, the proposals made over time that premised  
17 no such right existed.  
18 4. Defendants' proposals over the last 13 years involving the rights  
19 to the IP: each one of these presumes that Defendants' Claimed  
20 Right does not exist.

21 **D. Summary of Expected Objections or Rebuttal Evidence**

22 Other than the objections to evidence already presented, Plaintiff and Third-  
23 Party Defendants are not aware of any other objections. Their rebuttal evidence will  
24 attempt to inject inadmissible statements or inadmissible beliefs unstated

25 **E. Reservation of Rights**

26 This proffer is a summary made in good faith and does not constitute a full  
27 recitation of all facts, testimony, or exhibits the Plaintiff and Third Party Defendants  
28 may present, and thus they reserve the right to supplement or amend this proffer

1 based on what transpires at trial.

2 **III. PLAINTIFF AND THIRD-PARTY DEFENDANTS' PROFFER OF**  
3 **PROOF AS TO THE ABSENCE OF EVIDENCE ON DEFENDANTS'**  
4 **ASSIGNMENT IN GROSS AND WAIVER DEFENSE**

5 First, Defendants' assignment in gross defense will fail because of the  
6 existence of a (1) deed transferring the goodwill to SPAVI from Cinco and the  
7 testimony of both Cinco and SPAVI agreeing that goodwill was transferred and (2)  
8 testimony and evidence from Vicente Gregorio and Jorge Concepcion regarding the  
9 plans by SPAVI to use the goodwill and expand upon it and capitalize on it for the  
10 benefit of the owner of the marks.

11 Second, it is unclear what right of SPAVI or Cinco is purported to have been  
12 waived. As such, it is difficult to predict what evidence will be necessary.

13 DATED: August 14, 2025

/s/ Michael D. Murphy

14 Michael D. Murphy

15 Matthew Follett

16 Fox Rothschild LLP

17 *Attorneys for Plaintiff and Counterclaim  
Defendant, and Third Party Defendants*

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